

**MINUTES OF THE REGULAR MEETING OF THE  
ARIZONA STATE RETIREMENT SYSTEM BOARD**

**HELD ON  
Friday, April 20, 2001  
8:30 a.m., MST**

The Arizona State Retirement System (ASRS) Board met in the 10<sup>th</sup> Floor Board Room of the ASRS office at 3300 North Central Avenue, Phoenix, Arizona 85067-3910. Mr. Jim Bruner, Vice Chairman, Arizona State Retirement System Board, called the meeting to order at 8:30 a.m., MST. The meeting was teleconferenced to the ASRS Tucson office, 7660 East Broadway Boulevard, Suite 108, Tucson, Arizona 85710-3776.

**1. Call to Order; Roll Call; Opening Remarks**

Present: Dr. Chuck Essigs, Chairman (arrived at 9:17 a.m.)  
Mr. Jim Bruner, Vice Chairman  
Ms. Bonnie Gonzalez  
Mr. Jim Jenkins  
Mr. Alan Maguire (arrived at 8:32 a.m.)  
Mr. Norman Miller  
Mr. Karl Polen (via teleconference)  
Mr. Ray Rottas

Excused: Dr. Merlin DuVal

A quorum was present for the purpose of conducting business.

**2. Approval of Minutes of the March 16, 2001, Regular Meeting and the March 16, 2001, Executive Session of the ASRS Board**

**Motion:** Mr. Norman Miller moved to approve the minutes of the March 16, 2001, regular meeting and the March 16, 2001, executive session of the ASRS Board.

Mr. Jim Jenkins seconded the motion.

By a vote of 6 in favor, 0 opposed, 0 abstentions, 3 excused, the motion was approved.

**3. Board Approval of Consent Schedule**

**Motion:** Mr. Ray Rottas moved that the ASRS Board approve the summary report of Retirements,

Refunds and Death Benefits, System Transfers, Representative Payee Request for Anne E. Elick, and Application and Agreements with the Town of Clarkdale.

Ms. Bonnie Gonzalez seconded the motion.

By a vote of 6 in favor, 0 opposed, 0 abstentions, 3 excused, the motion was approved.

**Mr. Alan Maguire arrived at 8:32 a.m.**

#### **4. Presentation, Discussion and Appropriate Action with Respect to the Investment Manager Contract Renewals**

Mr. Jim Bruner, Chairman of the Investment Review Board Committee (IRBC), reported that the committee met on April 17 and discussed and recommended the extension of existing contracts with several investment managers.

**Motion:** Mr. Alan Maguire moved to approve the contract extension of the following investment managers:

<u>Contractor</u>	<u>Service</u>	<u>Current Expiration Date</u>	<u>New Expiration Date</u>	<u>Next RFP Date</u>	<u>Basis Points</u>
<u>Mellon Equity</u>	<u>Mid Cap Active Equity</u>	<u>05/28/01</u>	<u>05/28/02</u>	<u>In Process</u>	<u>20</u>
<u>State Street Global Advisors</u>	<u>Mid Cap Passive Equity</u>	<u>05/28/01</u>	<u>05/28/02</u>	<u>In Process</u>	<u>4 to 50M, 3 next 50M, 2 thereafter</u>
<u>Barclays Global Investors</u>	<u>Tactical Asset Allocation</u>	<u>07/01/01</u>	<u>07/01/02</u>	<u>01/01/02</u>	<u>12</u>
<u>JP Morgan</u>	<u>Large Cap Active Equity</u>	<u>07/01/01</u>	<u>07/01/02</u>	<u>01/01/02</u>	<u>14</u>
<u>Mellon Equity</u>	<u>Large Cap Active Equity</u>	<u>06/09/01</u>	<u>06/09/02</u>	<u>12/01/01</u>	<u>12</u>
<u>Barclays Global Investors</u>	<u>Large Cap Passive Equity</u>	<u>07/01/01</u>	<u>07/01/02</u>	<u>01/01/02</u>	<u>.5</u>

Mr. Jim Jenkins seconded the motion.

By a vote of 7 in favor, 0 opposed, 0 abstentions, 2 excused, the motion was approved.

Mr. Bruner reviewed other issues discussed at the IRBC meeting including: 1) Currency hedging, with the consensus that it would not benefit the investment performance of the fund; 2) Alternative fixed investments, or the ability to use domestic high yield bonds to increase yields, with the recommendation that Mr. Terry Dennison, Principal, Mercer Investment Consulting and staff develop a proposal on how to implement it and make a presentation to the full Board; 3) Assets held in Japan, with a request that the Board receive a full report from the international managers about their thoughts and rationale for holding Japanese issues; 4) Real

estate equity holdings of public funds, which staff will present at the next IRBC meeting to be held on May 15, 2001 at 2 p.m.

**5. Presentation, Discussion and Appropriate Action Regarding the Calculation of Retirement Benefits of Members Receiving Early Retirement Plan Benefit Payments**

Mr. Fred Stork, Assistant Attorney General, provided a brief background on the matter before the Board. Prior to 2000, members who took early retirement plan (ERP) incentives were required to continue to provide some level of service to their employer. The ASRS included the payments received before retirement but not the ERP payments when they were received after retirement, under the theory that it was compensation for new services. Last year, the Attorney General determined that employees who retired under ERPs were not required to continue working and that the ERP payments after retirement were deferred compensation for services already rendered. Based on that opinion, Mr. Stork advised the ASRS and outside attorneys that the ERP payments received after retirement should be included in the calculation of the 60-month average compensation. The ASRS notified the employers who have ERP programs of the change and directed employers and employees to report compensation and contributions accordingly. There continued to be questions on the policy, so the ASRS director requested an official opinion from the Attorney General. In January 2001, the Attorney General issued the opinion that such post-retirement payments, under the ASRS statutes, are not included in the calculation. Mr. Stork also provided an analysis and recommendation to the Board for discussion to determine the following: 1) Should the ASRS stop including the ERP payments in the calculation, per the Attorney General's opinion; and 2) Should the ERP payments be included in the calculation of those members who previously retired with an ERP incentive, particularly those retired in the past year on reliance of the ASRS' decision that the payments would be included.

Mr. Rottas asked what the Board would be allowed to do under the circumstances. Mr. Stork recommended that from this date forward (April 20, 2001) the ASRS no longer include post-retirement payments that members received under an ERP, per the Attorney General's opinion. For those who retired prior to this date, he recommended that the ASRS include those payments.

Mr. Miller inquired about the consequences of choosing not to follow the Attorney General's opinion. Mr. Stork responded that the Board is not obligated to follow it, but failing to do so may expose the Board to questions of liability. Mr. Miller commented that he believes the Board is duty bound to follow that opinion. He then questioned how to treat, in a fair and equitable manner, those who have received compensation and asked how many individuals would be affected. Mr. Stork responded that the numbers are not negligible and that there are hundreds, perhaps thousands, of retirees.

Mr. Maguire clarified that there are three periods of time involved: 1) Pre-May 2000, when payments were not included; 2) Post-May 2000 through the date of the Attorney General's opinion, when payments were included; and 3) From this date forward. Mr. Stork explained that in the May 2000 communication from the ASRS, the agency announced that it would go back and recalculate the benefit payments for those who had retired earlier to include the ERP payments in the calculation, if the individual requested it, and would collect contributions for the additional compensation.

Mr. Maguire asked whether everyone who elected to have the ERP payments included in the calculation after the ASRS' decision made employee and employer contributions on that amount. Mr. Stork responded that

the compensation amounts would not have been included unless contributions had been made; however, to the knowledge of the ASRS, no recalculations have yet been done for pre-May 2000 retirees.

Mr. Rottas reminded the public in attendance that the ASRS Board is an administrative body that must conform to the law.

Mr. Jim Bruner asked for comments from the public.

Mr. Ben Lindsey, representing Phoenix Union High School District Retirees, asked for clarification of Mr. Stork's recommendation to the Board. Mr. Stork responded that from this date forward he recommends the ASRS follow the Attorney General's opinion, but that the ASRS follow his opinion for those who retired prior to this date, under the theory that the agency is responsible for any injury caused by that agency's change in position. Mr. Lindsey noted that there were thousands of teachers who made the decision to retire based on the ASRS' inclusion of the ERP payments in the calculation, and he believes the agency should honor that policy.

Mr. Mike Grosio, of Phoenix, commented that one of the reasons he retired in May 2000 was because of the incentive program and because he was told that the ERP payments would be included in the calculation of his retirement benefit. He would not have retired without the incentive. He also noted that he paid both the state and employee's contributions before retirement and questioned how that would be repaid.

Ms. Frances L. Morse, of Deer Valley School District, told the Board that district employees asked questions and attended ASRS meetings before making the decision to retire. She noted that if the Board pursues recovery of payments made, it will impact the retirees who relied on the ASRS policy, as well as ASRS personnel, and expose the agency to possible litigation.

Mr. Pete Kellen, of Scottsdale, remarked that some of the ASRS publications consider ERP programs as a strategy to maximize retirement. He also encouraged the Board to ensure the equitable treatment of all retirees in their considerations.

**Dr. Chuck Essigs arrived at 9:17 a.m.**

Mr. Michael Nacinovich, of Phoenix, pointed out that the ERP payments increases the benefits, but employees and employers paid contributions, state and federal taxes on it, and he personally, decided to purchase years of service based on the calculation. He questions how all of those payments will be reinstated if the Board pursues recovery.

Mr. Mel Franklin, of Tucson Amphitheater School District, commented that he chose retirement based on the information provided by the ASRS. He actually incurred a penalty for retiring early, but with the promise that the ERP payment would be included in the calculation.

Mr. Rob Lenihan, also of the Tucson Amphitheater School District, agreed with Mr. Stork's recommendation to proceed with the Attorney General's opinion from this point forward, but to leave past retirees benefits at the level they believe they would receive. He also asked if employees could pay an employers portion of the contribution if a school districts wasn't willing to pay it.

Ms. Roberta Martin, of Phoenix, commented that members, many of whom are now retired, contributed 7.00 percent at the time, which was considerable at the time. Current members only contribute 2.17 percent. In her opinion, because of that inequity, it does not seem inappropriate for retirees under the ERP program to receive a higher benefit.

Mr. Maguire reiterated that the Board does not have authority to expend money. That authority is vested solely in the law and there are times when the Board is forced to do what the law says that may not seem the fairest thing to do. He believes Mr. Stork's opinion to include the ERP payments in compensation was reasonable and justifiable, according to one view of the law. Mr. Maguire also believes the Attorney General's opinion is reasonable and justified by the law. In instances like this, the agency must make administrative decisions to make sure the law is equitably applied to all people. In consequence of that, members rely on the decisions made by the administration, particularly when they are made in good faith. Not only was Mr. Stork's opinion reasoned, but it was also equitably applied because of the decision to recalculate benefits for retirees before May 2000. It is clear to him that including the ERP payments created an attractive retirement benefit and that many people acted on upon that. However, the Board has an obligation to carefully consider the Attorney General's opinion and unless they find it obviously inappropriate, the Board is bound to follow the opinion. He believes Mr. Stork's recommendation to treat future and past retirees with different expectations is fair and reasonable.

Mr. Maguire then asked questions about the contributions that have been made and if there exist any concerns about asking employers to go back and make contributions. Mr. Stork answered that all contributions were collected from the employees, but that he hopes the ASRS will be able to negotiate with employers who may raise some issues and resolve them amicably and fairly.

Mr. Maguire expressed concern about choosing a precise date to distinguish between the two opinions considering some people may be caught in transition. Mr. Stork noted that the ERP program requires a notice to retire to the employer; however the ASRS would have to find out from employers if an employee had taken irrevocable steps towards retirement.

Mr. Miller offered a solution to deal with those in the process of retiring on an individual case-by-case basis, as the ASRS must do on many occasions. Mr. Karl Polen pointed out that if the ERP program is primarily offered to teachers, then April 20th is not necessarily an appropriate date to draw a line. Mr. LeRoy Gilbertson, Director, clarified that only certain school districts have set up ERP programs and it is likely that the teachers would have made the determination to retire by that date. Dr. Chuck Essigs questioned how specific the criteria should be to determine that someone was in the process of retiring. Mr. Polen suggested the action toward retirement be substantial rather than irrevocable because many people have been considering retirement, based on the ASRS policy, who may not be aware of the change, so the Board should not be too abrupt in changing it.

**Motion:** Mr. Alan Maguire moved that the Board adopt as the policy of the ASRS, effective April 20, 2001, the opinion of the attorney general that early retirement benefits paid to a member after the member's termination of employment or retirement are not includible when calculating the member's average monthly compensation under the ASRS.

Mr. Jim Bruner seconded the motion.

By a vote of 8 in favor, 0 opposed, 0 abstentions, 1 excused, the motion was approved.

**Motion:** Mr. Alan Maguire moved that the Board adopt as the policy of the ASRS that the ASRS will include early retirement benefit payments in the calculation of the pension benefits of retired members who retired before April 20, 2001, who are receiving early retirement benefits after retirement and who elect to include the early retirement benefits they are receiving in the calculation of their pension benefits. In addition, any member who can prove to the satisfaction of the director that the member has undertaken one or more material and substantive actions on or before April 20, 2001, to retire shall be eligible to be treated as if they had retired before April 20, 2001. The decision of the director shall be subject to appeal to the Board

Mr. Jim Bruner seconded the motion.

By a vote of 8 in favor, 0 opposed, 0 abstentions, 1 excused, the motion was approved.

**Motion:** Mr. Alan Maguire moved that the Board direct the ASRS to collect employer and employee contributions on early retirement benefits paid to retired members who retired between February 1, 2000 and April 20, 2001, who are receiving early retirement benefits after retirement and who elect to have such early retirement benefits included in the calculation of their pensions.

Ms. Bonnie Gonzalez seconded the motion.

By a vote of 8 in favor, 0 opposed, 0 abstentions, 1 excused, the motion was approved.

**Motion:** Mr. Alan Maguire moved that Board adopt the policy of the ASRS that it shall collect employee contributions on early retirement benefits paid to retired members who retired prior to February 1, 2000, who are receiving early retirement benefits after retirement, and who elect to have their retirement benefits calculated to include such early retirement benefits in the calculation of their pensions.

Mr. Jim Bruner seconded the motion.

Dr. Essigs asked why the employer contributions will not be collected. Mr. Stork answered that the employers will be asked to pay on a case by case basis, but the ASRS will not attempt to collect from them. The previous motion includes the employers because they had the benefit of the announcement from the ASRS that those ERP payments would be included in the compensation. The group in the past was not aware of the change of position.

By a vote of 8 in favor, 0 opposed, 0 abstentions, 1 excused, the motion was approved.

## **6. Presentation, Discussion and Appropriate Action Regarding Current Legislative Issues**

Mr. Norman Miller remarked that it has been a vigorous legislative session and the ASRS staff and Board members have been very active by holding weekly meetings and diligently following the retirement-related bills in the legislative process.

Mr. Miller informed the Board of the death of Senator Andy Nichols of Tucson and noted that his loss will be felt at the Legislature.

**Motion:** Mr. Norman Miller moved that the Board adopt a resolution honoring the memory of Senator Andy Nichols and expressing condolences to his family upon his passing.

Mr. Jim Bruner seconded the motion.

By a vote of 8 in favor, 0 opposed, 0 abstentions, 1 excused, the motion was approved.

Mr. Tom Augheron, Deputy Director External Operations, and Mr. Tom Finnerty, Legislative Liaison, summarized the status of the handful of ASRS-related bills still under consideration by the Legislature. All of the following bills are considered to be "in the box," or have a fiscal impact; most of them have no impact until 2004, but there is some hesitation in the legislature to commit to funds:

**SB 1295 (retirement benefits; defined contribution supplement)**

Continues to be the subject of requests for cost estimates on a variety of amendments being proposed for the floor.

**SB 1100 (supplemental defined contribution plans)**

Passed the House and Senate and is waiting for House concurrence.

**SB 1107 (retirees; health insurance; subsidies)**

Passed the appropriations committee without being amended. However some representatives would like to add some of the provisions of HB 2164 to this bill.

**HB 2164 (retirees; health insurance subsidies)**

Is in the Senate

**HB 2004 (ASRS; actuarial computation method)**

Staff is monitoring the activities at the Capitol daily.

## **7. Director's Report**

Mr. Ray Rottas reported that he had requested that Mr. Fred Stork provide a memo to members of the Board outlining the procedures for Executive Sessions. Without objection, Mr. Rottas requested the following memo be included in the minutes of this meeting:

**ARIZONA STATE RETIREMENT SYSTEM**

**MEMORANDUM**

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**TO:** Members of the Board  
**FROM:** Fred Stork  
**DATE:** April 3, 2001  
**RE:** Executive Sessions to Discuss Employees and Salaries

The discussion or consideration of employment, assignment, appointment, promotion, demotion, salaries, discipline, resignation, or dismissal of a public officer, appointee, or employee of a public body [such as the ASRS Board] may take place in executive session. A.R.S. § 38-431.03(A)(1). This includes the discussion or consideration of the performance or evaluation of the performance of a public officer, appointee, or employee of the Board. This authorization for an executive session



applies only to discussions concerning specific officers, appointees, and employees.

If the affected officer, appointee, or employee requests, these discussions, with the exception of salary discussions, must be conducted in a public meeting and not in an executive session. A.R.S. § 38-431.03(A)(1). Accordingly, the Open Meeting Law requires that an officer, appointee, or employee who is the subject of the discussion in executive session must be given advance notice of the proposed executive session. Id. Although written notice is not required, the notice given to the officer, appointee, or employee must describe the matters to be considered by the Board in a manner sufficient to enable the employee to make the initial decision whether to have the matters discussed in a public meeting. Id. In addition, the notice must be given sufficiently in advance of the proposed meeting, and in no event less than twenty-four hours prior to the meeting, to enable the employee to make the foregoing determination and to prepare an appropriate request for a public meeting. Id.

If an officer, appointee or employee whom the Board proposes to discuss in executive session does not request that the discussion be conducted in a public meeting, the Board may proceed to discuss the individual in an executive session. The Board may permit the public officer, appointee, or employee being discussed to attend the executive session. The Open Meeting Law does not provide that the public officer, appointee, or employee being discussed has the right to attend the executive session. Whether the public officer, appointee, or employee being discussed is permitted to attend the executive session appears to lie within the sound discretion of the Board. Whether he attends or not, the Board must make the minutes of the executive session available to the public officer, appointee, or employee who was the subject of discussion in the executive session. A.R.S. § 38-431.03(B)(2).

If the Board discusses a public officer, appointee, or employee in an executive session, and permits the individual officer, appointee, or employee being discussed to attend the executive session, the Board should not permit other officers, appointees or employees of the Board to attend the executive session unless their presence is necessary in order for the Board to engage in a meaningful discussion of the public officer, appointee, or employee being discussed. Minutes of and discussions at executive sessions must be kept confidential except from members of the Board and the individual officer, appointee or employee who was the subject of discussion or consideration at an executive session under A.R.S. § 38-431.03(A)(1). A.R.S. § 38-431.03(B).

Whether the Board discusses the performance of an officer, appointee, or employee in executive session (with or without the employee attending) or in a public meeting, the Board may discuss the employee's salary in executive session which the employee does not have the right to request be conducted in a public meeting. Moreover, when the Board is discussing an officer, appointee, or employee's salary in executive session, the officer, appointee, or employee is not permitted to attend the executive session unless the officer, appointee, or employee's presence is necessary in order for the Board to engage in a meaningful discussion. Such an executive session must be kept confidential except from members of the Board. A.R.S. § 38-431.03(B).

The Board, when it discusses salaries in executive session, however, may not engage in any discussion other than salaries unless it has complied with the Open Meeting Law requirements discussed above applicable to the discussion of an individual officer, appointee, or employee in executive session. If the Board proposes to discuss both an employee's performance and the employee's salary in executive session, the Board must provide proper notice to the employee so that the employee may decide whether to request that the Board discuss his performance in a public meeting. If the employee does not request a public meeting, the Board may proceed to discuss the employee's performance and salary in executive session. If the Board permits the employee to be present during the Board's discussion of his performance, the Board should excuse the employee when the Board has completed its discussion of his performance so that it can complete its discussion about salary in executive session. On the other hand, the Board always has the right to discuss salaries at a public meeting.

## **8. Board Requests for Agenda Items**

Mr. Karl Polen asked for an interim review of Tactical Asset Allocation. Mr. Jim Bruner agreed it would be appropriate for staff to make a brief presentation on this topic at the May 15, 2001, IRBC meeting.

## **9. Call to the Public**

Mr. Bill Peltier of Tucson thanked the Board, especially Mr. Maguire, for covering the issues of the ERP topic. Mr. Maguire gave credit to the staff.

## **10. The next regular ASRS Board meeting is scheduled for Friday, May 18, 2001, at 8:30 a.m. in the 10<sup>th</sup> Floor Board Room of the ASRS office at 3300 North Central Avenue, Phoenix, Arizona 85067-3910.**

## **11. Adjournment of the ASRS Board.**

Dr. Chuck Essigs adjourned the April 20, 2001 regular meeting of the ASRS Board at 10:21 a.m.

Respectfully submitted,

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Maurah Harrison, Secretary

Date

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LeRoy Gilbertson, Director

Date